

## REMARKS

### **1. The claims as amended fulfill the requirements of 35 U.S.C. §112.**

Claims 31-42, 57-60 and 63 stand rejected under 35 U.S.C. 112, second paragraph. Applicants understand that the grounds of rejection are predicated on the particularity with which certain claim language is used. The Examiner has helpfully suggested an amendment for claims 31-34 that would overcome this ground of rejection, for which Applicants are grateful. Having amended claim 31 according to the Examiner's suggestion, Applicants respectfully contend that this ground of rejection has been overcome and ask the Examiner to withdraw it.

With regard to rejections based on the relationship between the phased tetracycline operators and the TATA sequence, Applicants have amended claims 32, 33 and 34 to indicate that the recited distances relate to the position of the TATA sequence in the expression vector.

Claim 42 is deemed indefinite for reciting that the expression vector comprising more than one cyclin-dependent kinase inhibitor. The Action states that a gene encoding a cyclin-dependent kinase inhibitor does not support claim 42. Applicants note that their distinction in response to these grounds of rejection in the previous Office Action were not persuasive. Accordingly, Applicants have amended this claim to recite "one or a plurality of CDK inhibitors," which should clarify the claim language. Support for this amendment can be found, inter alia, at paragraph 93. Applicants respectfully contend that this amendment overcomes the asserted ground of indefiniteness under 35 U.S.C. §112, second paragraph. Applicants respectfully request that this ground of rejection be withdrawn.

Claims 57-60 and 63 are rejected under 35 U.S.C. §112, first paragraph for failure to satisfy the written description requirement, characterized in the Action as being a "new matter" rejection. The Action states that the specification as filed does not support a peptide encoding a multiplicity of Cy motifs. The Action asserts the holding of *In re Ruschig* in support of this rejection. Applicants respectfully maintain that *Ruschig* is misapplied here. The *Ruschig* decision was concerned with the applicability of a prior art reference to a pending claim, and the inapplicability of the prior art genus to render obvious the explicitly-disclosed species. Thus, Applicants continue to maintain that the explicit language of the specification: "in one embodiment of the invention multimeric repeats of Cy motifs controlled by an inducible system

are used to provide multiple Cy inhibitory species in order to target CDK-cyclin activity” supports the pending claims. Applicants further maintain that the scope of the specification parallels the scope of the pending claims: unlike the situation in *Ruschig*, there is no particular species recited but a subgenus comprising the species falling within the scope of the pending claims. Applicants further note that they were under no obligation to supply a particular example to support these generic claims. *In re Borkowski*, 422 F.2d 904, 908, 164 USPQ 642 (CCPA 1970); *In re Strahilevitz*, 668 F.2d 129, 212 USPQ 561 (CCPA 1982)

Applicants respectfully request that this ground of rejection be withdrawn.

### **CONCLUSION**

Applicants respectfully submit that all requirements of patentability are fully met, and allowance of the claims is respectfully submitted.

If the Examiner believes it to be beneficial, he is invited to contact the undersigned attorney by telephone at (312) 913-0001.

Respectfully submitted,  
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